

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

E. KENT HALVORSON,

Plaintiff,

v.

SOLAROAD TECHNOLOGIES GROUP,  
LLC, et al.,

Defendants.

No. C11-333Z

ORDER

THIS MATTER comes before the Court on defendants' motion to dismiss for lack of personal jurisdiction or alternatively to transfer this matter to the United States District Court for the District of Maryland, docket no. 8. Having considered all papers filed in support of, and in opposition to, defendants' motion, the Court enters the following Order.

**Background**

This action arises out of unsuccessful negotiations between plaintiff E. Kent Halvorson and defendant Kahrl L. Retti, Chief Executive Officer of defendant Solaroad Technologies Group, LLC ("Solaroad") and defendant Solaroad Electrawall, LLC ("Electrawall"), concerning exclusive distribution rights for Electrawall products in Washington, Oregon, Idaho, California, Arizona, Nevada, Utah, and Hawaii. *See* Ex. B to Retti Decl. (docket no. 14-2). Plaintiff resides in Washington. Halvorson Decl. at ¶ 2 (docket no. 12). Retti resides in Maryland. Retti Decl. at ¶ 2 (docket no. 9). Solaroad and

1 Electrawall are incorporated in, and have their principal place of business in, Maryland. *Id.*  
2 at ¶¶ 3-5. Neither company has any offices, property, or employees in Washington. *Id.* at  
3 ¶ 6.

4 The parties agree that Joseph Zedalis, a resident of Washington, who was acquainted  
5 with both plaintiff and Retti, initiated the distributorship negotiations. *See* Halvorson Decl.  
6 at ¶ 3; Zedalis Decl. at ¶¶ 4-5 (docket no. 15). Plaintiff contends that Zedalis indicated that  
7 he represented Retti, Solaroad, and Electrawall. Halvorson Decl. at ¶ 3. Zedalis denies  
8 making such statement to plaintiff, and Retti denies that Zedalis was ever an agent or was  
9 authorized to act on behalf of him or his companies. Zedalis Decl. at ¶¶ 6-7; Retti Decl. at  
10 ¶¶ 3-4, 6 (docket no. 14).

11 Negotiations between plaintiff and Retti occurred in Maryland, Pennsylvania, and via  
12 telephone and e-mail. Halvorson Decl. at ¶¶ 5-15; Retti Decl. at ¶¶ 9-13 (docket no. 9).  
13 On plaintiff's first of at least two visits to Maryland, and on each of his two visits to  
14 Pennsylvania, plaintiff was accompanied by individuals who are also residents of  
15 Washington. Halvorson Decl. at ¶¶ 5, 9, 13-14. Before attending these meetings, plaintiff  
16 signed a confidentiality agreement containing the following provision: "The laws of the  
17 State of Maryland shall govern the validity and construction of this letter and any dispute  
18 arising out of or relating to this letter, without regard to the principles of conflict of laws.  
19 The parties submit to the jurisdiction of the courts of the State of Maryland and the venue of  
20 the U.S. District Court for Maryland." Ex. A to Retti Decl. (docket no. 14-1 at 3, ¶ 12).  
21 During the course of negotiations, neither Retti nor any of his employees traveled to  
22 Washington. Retti Decl. at ¶¶ 2, 9 (docket no. 9).

23 In March 2010, plaintiff arranged for a wire transfer of \$100,000 to Cardinal Systems,  
24 a company located in Pennsylvania that provides manufacturing services for Solaroad and  
25 Electrawall. Halvorson Decl. at ¶¶ 8, 12; Retti Decl. at ¶ 15 (docket no. 9). Cardinal  
26 Systems subsequently transferred this sum to defendants. Retti Decl. at ¶ 15. Plaintiff

1 alleges that this money was sent at Retti's telephonic request when Retti indicated he  
2 "needed cash very badly to keep his businesses going." Halvorson Decl. at ¶ 10. Retti  
3 disputes this characterization. According to Retti, plaintiff insisted that defendants suspend  
4 negotiations with the "Senergent Group," which was Joseph Zedalis's venture and, in  
5 exchange, plaintiff promised \$500,000 in earnest money, of which the \$100,000 payment  
6 was an initial installment. Retti Decl. at ¶ 14-15 (docket no. 9).

7 No distributorship agreement was ever consummated and, despite plaintiff's demand  
8 for a refund, defendants retained the \$100,000 that plaintiff had wired to Cardinal Systems.  
9 Halvorson Decl. at ¶ 17. In December 2010, plaintiff initiated this action for conversion,  
10 unjust enrichment, and violation of Washington's Securities Act in King County Superior  
11 Court, and thereafter, defendants removed the matter to this Court, asserting diversity  
12 jurisdiction. See Notice of Removal (docket no. 1). Defendants now seek to either dismiss  
13 the case for lack of personal jurisdiction or transfer it to the District of Maryland.

#### 14 **Discussion**

15 The law is clear that the Court need not resolve a motion to dismiss for lack of  
16 personal jurisdiction before deciding whether to transfer the case to another district under  
17 28 U.S.C. § 1404. See Nelson v. Int'l Paint Co., 716 F.2d 640, 643 n.4 (9th Cir. 1983); see  
18 also Kahhan v. City of Fort Lauderdale, 566 F. Supp. 736, 738 (E.D. Pa. 1983). The Court  
19 may proceed in this manner because a case may be transferred to another district even when  
20 the transferring court lacks personal jurisdiction over one or more defendants. Nelson, 716  
21 F.2d at 643 n.4; see Goldlawr, Inc. v. Heiman, 369 U.S. 463 (1962); United States v.  
22 Berkowitz, 328 F.2d 358, 361 (3d Cir. 1964); Welsh v. Cunard Lines, Ltd., 595 F. Supp. 844,  
23 845 (D. Ariz. 1984).

24 The factors to consider in deciding whether to transfer a case pursuant to § 1404 fall  
25 into two classes, private and public. Decker Coal Co. v. Commonwealth Edison Co., 805  
26 F.2d 834, 843 (9th Cir. 1986); see also Lee v. Corr. Corp. of Am., 525 F. Supp.2d 1238,

1 1243-44 (D. Haw. 2007). Private factors include (i) the relative ease of access to sources of  
2 proof, (ii) the availability of compulsory process to secure the attendance of unwilling  
3 witnesses, and (iii) any differences in the expenses of litigation between the forums. See  
4 Decker, 805 F.2d at 843; Lee, 525 F. Supp. 2d at 1244; see also Jones v. GNC Franchising,  
5 Inc., 211 F.3d 495, 498-99 (9th Cir. 2000). Public factors include (iv) the local interest in  
6 deciding a localized controversy, (v) the forum's familiarity with the governing law, and  
7 (vi) any unfair burden to citizens called for jury duty concerning matters unrelated to the  
8 forum. Decker, 805 F.2d at 843; Jones, 211 F.3d at 498. In addition, (vii) the plaintiff's  
9 choice of forum and (viii) the presence of a forum selection clause must be considered.  
10 Jones, 211 F.3d at 498-99.

11 In this case, the factors weigh heavily in favor of transfer. The negotiations transpired  
12 primarily in Maryland, with the contours of a preliminary agreement having been reduced to  
13 hand-written form in Retti's Maryland office. See Ex. B to Retti Decl. (docket no. 14-2).  
14 Prior to this meeting, plaintiff had executed a confidentiality agreement in which he assented  
15 to having Maryland law govern and to having Maryland courts decide certain disputes that  
16 might arise between him and Retti or his companies. In contrast, Retti never traveled to  
17 Washington, nor did any employees of his companies, and the deal being discussed with  
18 plaintiff would have encompassed far more than just Washington. Thus, this forum's interest  
19 in adjudicating the controversy is minimal. The expenses of litigation are not anticipated to  
20 be vastly different. For example, regardless of which forum presides over this matter, the  
21 parties will be required to travel to depose witnesses, some of whom are apparently in  
22 Pennsylvania. On balance, the Court is persuaded that transferring this action to the District  
23 of Maryland is "in the interest of justice." 28 U.S.C. § 1404.

#### 24 **Conclusion**

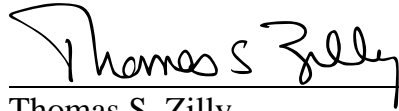
25 For the foregoing reasons, defendants' motion is GRANTED in part and STRICKEN  
26 in part. This action is hereby TRANSFERRED to the United States District Court for the

1 District of Maryland (Northern Division) pursuant to 28 U.S.C. § 1404. Defendants' motion  
2 is otherwise stricken as moot.

3 IT IS SO ORDERED.

4 The Clerk is directed to send a copy of this Order to all counsel of record.

5 DATED this 12th day of May, 2011.

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9 Thomas S. Zilly  
10 United States District Judge  
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